

IN THE UNITED STATES SUPREME COURT
WASHINGTON, D.C.

Supreme Court, U.S.
FILED

OCT 17 1979

MICHAEL BOYAK, JR., CLERK

CASE NO.

79-833

ROBERT J. KONDRAT
Plaintiff-Appellant

vs.

CITY OF WILLOUGHBY HILLS, et al.
Defendant-Appellees

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CINCINNATI, OHIO
CASE NO. 77-3405

PETITION FOR WRIT OF CERTIORARI

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PETITION FOR WRIT OF CERTIORARI

In accordance with this court's instructions, and Rule 23 as adopted by the Supreme Court of the United States, Plaintiff-Appellant petitions for a Writ of Certiorari to review judgement of captioned case. As per Rule 23, the following is submitted:

(a) References to official and unofficial reports of opinions delivered in the courts below are:

(i) ORDER AND MEMORANDUM of the United States District Court, Northern District of Ohio, Eastern Division; and (ii) ORDER of the United States Court of Appeals for the Sixth District — copies of both which are appended hereto.

(b) Statement of the grounds on which jurisdiction of this court is invoked shows:

(1) the date of the judgement or decree sought as being June 15, 1979, the time is not indicated; (ii) the date of any order

respecting a hearing, and the date and terms of any order granting an extension of time is not applicable herein; and (iii) the statutory provision believed to confer on this court's jurisdiction to review the judgement or decree in question by Writ of Certiorari is Article III of the Constitution of the United States which created the Supreme Court of the United States as a constitutional court giving judicial power to all cases, in law and equity, that arises under the Constitution.

(c) The questions presented for review are as follows:

- (i) Can absolute immunity be granted to officials for actions conducted during the investigative and/or administrative stages?
- (ii) Can absolute immunity be granted to officials such as mayors and Board of Elections heads? If so, where

does absolute immunity stop?

- (iii) Is a city or county considered as persons and be subject to liability for actions that infringe upon the constitutional rights of citizens?
- (iv) Is incarceration without plumbing and/or light considered as cruel and unusual punishment?
- (v) Can justice be expected to prevail when justice itself is a defendant?

(d) The constitutional provisions, treaties, statutes, ordinances, or regulations which the case involves -- all are Amendments to the Constitution of the United States, and are quoted in part as follows:

- (1) First - the right to petition the government for a redress of grievances.
- (ii) Fifth - not to be deprived of life, liberty or property, without due process of law.
- (iii) Sixth - the right to be informed of the nature and cause of the accusation.
- (iv) Eighth - cruel and unusual punishment.

(v) Fourteenth - nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

(e) Statement of the Case containing the facts and material to the consideration of the questions presented:

On or about August, 1976, Plaintiff-Appellant began the circulation of petitions seeking the recall of various public officials of the City of Willoughby Hills, Ohio. Various defendants engaged in activities to obstruct, cut short and infringe on Plaintiff's right as guaranteed by the First Amendment. The activities included: (i) threats to sue any citizen who had signed or would sign recall petitions; (ii) invited citizens to come to City Hall to have signatures removed; and (iii) tampered with the petitions by crossing out names. To punish Plaintiff, and

others, and to prevent a second recall, the Law Director of the City of Willoughby Hills, in concert with others, fabricated criminal activity which caused Plaintiff to be arrested, incarcerated and made to stand trial. The alleged criminal activity was trumped-up from a deposition subjected upon the Plaintiff, without benefit of the Miranda warning, or without being told the charges being investigated. The Lake County Board of Elections collaborated with the City of Willoughby Hills to infringe upon Plaintiff's right under the First Amendment by refusing to act on the petition tampering as reported to it on or about September 13, 1976. This obstructed the petitioning process by cutting short the statutory grace period time. Plaintiff alleges that on or about December 22, 1976, the Lake County Sheriff's Department arrested Plaintiff, delivered same to

Lake County Jail whereupon Plaintiff was incarcerated for over six days, first in a cell without plumbing, then in a cell without light, then in a cell with felons.

Plaintiff alleges this to be cruel and unusual punishment, for an alleged petition irregularity. This is in violation of the Eighth Amendment which forbids cruel and unusual punishment. Plaintiff alleges that on or about December 22, 1976, Plaintiff was arraigned in Lake County Court of Common Pleas, before Judge John Parks, who refused to give Plaintiff the specifics of Plaintiff's arrest, stating that they had to be secured through an attorney. The Judge's refusal was a violation of the Fifth Amendment, which deprived Plaintiff of liberty without due process of law; a violation of the Sixth Amendment, which did not provide Plaintiff the right to be informed of the nature and cause of the

accusation; and a violation of the Fourteenth Amendment, which did not provide Plaintiff equal protection of the laws. Plaintiff alleges that during a period between the months of August and December, 1976, the Lake County Prosecutor's office collaborated with the City of Willoughby Hills to secure indictments by knowingly using fabricated criminal activity and by deliberately suppressing exculpatory evidence. The subsequent arrest and incarceration of Plaintiff, as a result of the conspiratorial acts of the Lake County Prosecutor's office, infringed upon Plaintiff's right under the First Amendment; the right to petition the government for a redress of grievances.

- (f) Not applicable.
- (g) Basis for federal jurisdiction in the court of first instance is Article III of the Constitution of the United States.

This vests the judicial power in not only the Supreme Court but also in such other inferior courts as the Congress may establish. District courts are inferior constitutional courts.

(h) Argument amplifying the reasons relied on for the allowance of the writ is threefold:

- (i) The Court of Appeal's ORDER affirming the District Court's ORDER has decided a federal question in a way in conflict with applicable decisions of this court. The inferior courts have extended absolute immunity into the qualified immunity zone known as the investigative and/or administrative area, which is not an integral part of the judicial process. Furthermore the inferior courts have extended what appears to be absolute immunity to encompass officials such as mayors and Board

of Election heads.

- (ii) The inferior court's ORDER has recognized the city and county as being immune, not subject to liability for actions that infringe upon the constitutional rights of citizens.

- (iii) The inferior court's ORDER fails to recognize cruel and unusual punishment on the basis of the conditions that the incarcerated are subjected to. Instead the inferior court has excused this infringement as good faith performance of duties.

- (1) Appended herein to the petition are the opinions as delivered by the inferior courts and as instructed by paragraph (a) of Rule 23.
- (j) Appended herein to the petition are the inferior court's ORDERS.

Respectfully submitted,


-9- ROBERT J. KONDRAT, Pro se

(k)


PROOF OF SERVICE

A copy of the foregoing PETITION FOR WRIT
OF CERTIORARI was mailed by regular United States
mail, first class postage prepaid, on this 27th
day of November, 1979, to the following:

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BARRY M. BYRON
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Painesville, Ohio 44077

GEORGE LUTJEN
816 Engineers Building
Cleveland, Ohio 44114


ROBERT J. KONDRAT

FILED

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

GREEN, S. J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT J. KONDRAT

Plaintiff

v.

CITY OF WILLOUGHBY HILLS, et al


Defendants

Case No. C77-464

ORDER

UPON CONSIDERATION of defendants' motion to dismiss
plaintiff's complaint,

IT IS HEREBY ORDERED that the said motions are
granted and the complaint is dismissed for failure to state
a claim upon which relief can be granted.

 Ben C. Green
United States Senior District Judge

June 13, 1977

A-1

FILED

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT J. KONDRAT

Plaintiff

v.

CITY OF WILLOUGHBY HILLS, et al

Defendants

Case No. C77-464

MEMORANDUM

GREEN, S. J.:

This pro se action is brought based upon alleged deprivation "of rights as secured by the Constitution of the United States of America, under 42 U.S.C., Sections 1983 and 1985 and the First, Sixth, Eighth and Fourteenth Amendments to the U. S. Constitution." The named defendants are City of Willoughby Hills, Ohio, Lake County of Ohio, Judge John M. Parks, John E. Shoop and Edwin H. Cunningham. While not named as a party defendant in the caption of the complaint, it appears that E. W. Mastrangelo has also been served as a party defendant by virtue of his relationship to the Lake County Board of Elections. It further appears that defendant Parks is sued in his capacity as a judge of the Court of Common Pleas of Lake County, Ohio, defendant Shoop is sued by virtue of acts done as a member of the

Lake County Prosecutor's Office and defendant Cunningham is sued as the Sheriff of Lake County.

The action is presently before the Court on defendants' motions to dismiss the complaint. While such motions raise issues regarding immunity and want of federal jurisdiction, inherent in them is the general question of the sufficiency of the complaint to state a claim upon which relief can be granted.

At the outset, it is clear that plaintiff has no claim against the municipality and county under §1983. Not being natural persons they have no potential liability thereunder. Kenosha v. Bruno, 412 U.S. 507 (1973). For the reasons that will appear hereafter it is not necessary for the Court to determine defendants' contentions that the individuals are entitled to the protection of that immunity. The Court does note, however, that generally judges have an absolute immunity for acts done in their official capacity and that such immunity can extend to prosecuting attorneys. Imbler v. Pachtman, 424 U.S. 409 (1976). A lesser immunity extends to other officials acting in their public capacity.

The complaint itself is not particularly clear as to what constitutional rights plaintiff claims have been infringed and in what manner. It does appear that it relates to matters pertaining to an election petition

campaign, which culminated in petitioner's indictment by a grand jury in Lake County, Ohio, and subsequent confinement in the Lake County jail. There are allegations pertaining to claimed deprivation of rights at plaintiff's arraignment.


It is settled law that barring extraordinary circumstances the federal courts are not to interfere in unresolved state criminal proceedings. Hoffman v. Pursue, Ltd., 420 U.S. 592 (1975); Younger v. Harris, 401 U.S. 37 (1971). The United States Supreme Court has recently broadened the doctrine of Younger v. Harris in holding that under principles of comity the federal courts should not entertain actions inextricably intertwined with pending or imminent state civil actions. Trainor v. Hernandez, _____ U.S. _____, 45 Law Week 4535 (1977); Juidice v. Vail, _____ U.S. _____, 45 Law Week 4269 (1977).

Therefore, insofar as it appears from the face of the complaint that this suit relates to unresolved state proceedings, criminal or civil, it is inappropriate for determination at this time. Moreover, the Sixth Circuit Court of Appeals has recently spoken out several times condemning the practice of bringing into the federal courts matters which are essentially state questions under the guise of civil rights suits. Sullivan v. Brown, 544 F. 2d 279

(1976); Smith v. Martin, 542 F. 2d 688 (1976); Louisville Area Inter-Faith Committee v. Nottingham Liquors, 542 F. 2d 652 (1976). Insofar as this action involves a dispute as to election petitions such matters are fully and properly within the purview of the Ohio courts.

While the Court recognizes that pro se pleadings are entitled to the broadest construction, even under such a view the Court cannot find in plaintiff's complaint an actionable claim upon which relief can be granted under 42 U.S.C. §§1983 and 1985(3) at this time.

The motions for dismissal will be granted upon behalf of all defendants.

 Ben C. Green
United States Senior District Judge

June 13, 1977

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUITFILED

JUN 15 1979

JOHN P. HEHMAN, Clerk

ROBERT J. KONDRAT,
Plaintiff-Appellant

v.

CITY OF WILLOUGHBY HILLS,
OHIO, MELVIN G. SCHAEFER;
LAKE COUNTY OF OHIO, E. W.
MASTRANGELO, JUDGE JOHN M.
PARKS, JOHN E. SHOOP and
EDWIN H. CUNNINGHAM,

Defendants-Appellees

ORDERBefore: WEICK and MERRITT, Circuit Judges; PHILLIPS, Senior
Circuit Judge.

Plaintiff appeals from the dismissal of his pro se complaint, founded upon 42 U.S.C. § 1983 (1976), for failure to state a claim upon which relief could be granted. Rule 12(b)(6), FED. R. CIV. P. We affirm.

Plaintiff, a resident of Willoughby Hills, Ohio, participated in a petition drive, the object of which was to recall certain elected city officials. The Clerk of the City Council found the petitions defective under state law. The organizers then sought a writ of mandamus from the Ohio Supreme Court ordering the Clerk to place the recall on the November 1976 ballot, but that Court agreed that the petitions were defective and denied relief. Subsequently, plaintiff was indicted in state court on several counts of perjury for allegedly making false statements under oath concerning the

procedures he followed in gathering signatures for the petition drive. After his arrest, plaintiff was promptly arraigned, but he refused at that time to sign a personal recognizance bond or otherwise to take the steps necessary to secure his release. As a consequence, plaintiff was held in the county jail for six days. Plaintiff was later acquitted on the state criminal charges.

The complaint alleges that various actions by the defendants violated plaintiff's rights under the civil rights laws and the First, Fifth, Sixth, Eighth and Fourteenth Amendments. More specifically, the complaint asserts that the defendants unlawfully interfered with the petition drive, denied plaintiff due process of law at his arraignment, and subjected plaintiff to cruel and unusual punishment during his six-day incarceration. The named defendants are the City of Willoughby Hills, Lake County, Judge John M. Parks, Lake County Prosecutor John Shoop, and Lake County Sheriff Edwin Cunningham.

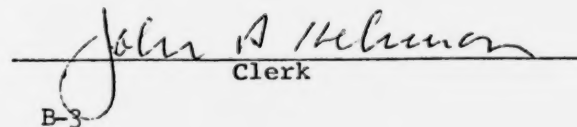
Construed in the light most favorable to the plaintiff, the allegations of the complaint against the Judge and Prosecutor are barred by the absolute immunity from suit such officials enjoy for actions taken in their official capacities. Pierson v. Ray, 386 U.S. 547 (1967); Imbler v. Pachtman, 424 U.S. 409 (1976). Similarly, the allegations against Sheriff Cunningham were properly dismissed for failure to state an actionable claim

because they are based entirely upon actions he undertook in the good faith performance of his duties. See Procunier v. Navarette, 434 U.S. 555, 561 (1978).

Relying on Monroe v. Pape, 365 U.S. 167 (1961), and Kenosha v. Bruno, 412 U.S. 507 (1973), the District Court dismissed the complaint against the municipal defendants on grounds that they were not "persons" subject to suit under the civil rights laws. Despite the Supreme Court's intervening decision in Monell v. Department of Social Services, 436 U.S. 658 (1978), overruling Monroe v. Pape, *supra*, we nevertheless rule that the claims against the City and County were also properly dismissed. Reading the complaint as indulgently as possible, we do not think that it alleges facts sufficient to state a cause of action under the civil rights laws. Moreover, at the hearing before this Court, plaintiff, who argued his cause pro se, was unable to supplement the bare allegations of his pleadings during a searching inquiry from the bench concerning the petition drive and the circumstances surrounding his incarceration in the Lake County jail.

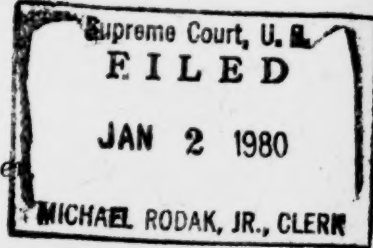
Accordingly, it is ORDERED that the order of the District Court dismissing the complaint be, and hereby is, affirmed.

ENTERED BY ORDER OF THE COURT


Clerk

Supreme Court of the United States

October Term, 1979
No. 79-833



ROBERT J. KONDRAT, *Petitioner*

VS.

CITY OF WILLOUGHBY HILLS, *et al.*, *Respondents*.

BRIEF IN OPPOSITION TO CERTIORARI

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Supreme Court of the United States

October Term, 1979

No. 79-833

ROBERT J. KONDRAT, *Petitioner*,

vs.

CITY OF WILLOUGHBY HILLS, *et al.*, *Respondents*.

BRIEF IN OPPOSITION TO CERTIORARI

OPINION BELOW

The opinion of the Sixth Circuit Court of Appeals is reported at 601 F.2d 589.

JURISDICTIONAL STATEMENT

The judgment which petitioner seeks to have reviewed was filed on June 15, 1979. There were no applications for extensions of time.

This Court could have asserted jurisdiction pursuant to 28 U.S.C., Section 1254(1), by way of certiorari to the Sixth Circuit Court of Appeals.

This Court lacks jurisdiction in this case, however, due to the failure of the petitioner to comply with 28 U.S.C., Section 2101(c).

Section 2101(c) confers jurisdiction on this Court to review a judgment or decree in a civil action by way of certiorari if applied for within 90 days after entry of such judgment or decree.

As noted, the judgment sought to be reviewed was filed by the Sixth Circuit Court of Appeals on June 15, 1979. Petitioner's time to file his petition thus expired on September 13, 1979. The petition was filed¹ on October 17, 1979, 124 days after the entry of judgment, and far outside the time within which this Court could acquire jurisdiction of the case.

Additional comments regarding the lack of jurisdiction will be found in the argument.

QUESTIONS PRESENTED

Presented By Respondents:

1. Does the Supreme Court of the United States have jurisdiction to review, by way of certiorari, an order of a federal Court of Appeals, where the petitioner does not present his petition within the time set by statute?

Presented By Petitioner:

2. Can absolute immunity be granted to officials for actions conducted during the investigative and/or administrative stages?
3. Can absolute immunity be granted to officials such as mayors and Board of Election heads? If so, where does absolute immunity stop?

1. Petitioner filed a document styled as a petition for certiorari with this Court on October 17, 1979. Because the document failed to comply with Rule 39, it was rejected by the Clerk on October 18, 1979.

The petition before this Court was filed by the petitioner on November 30, 1979, but, pursuant to Rule 39(4) the effective date of filing is considered to be October 17, 1979.

4. Is a city or county considered as persons and be subject to liability for actions that infringe upon the constitutional rights of citizens?
5. Is incarceration without plumbing and/or light considered as cruel and unusual punishment?
6. Can justice be expected to prevail when justice itself is a defendant?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Title 28, United States Code, Section 2101(c) and (d):

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

(d) The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

Rule 22, Rules of the Supreme Court of the United States (in part):

1. A petition for writ of certiorari to review the judgment of a state court of last resort in a criminal case shall be deemed in time when it is filed with the clerk within ninety days after the entry of such judgment.

* * * * *

2. A petition for writ of certiorari to review the judgment of a court of appeals in a criminal case shall be deemed in time when it is filed with the clerk within thirty days after the entry of such judgment.

* * * * *

3. A petition for writ of certiorari in all other cases shall be deemed in time when it is filed with the clerk within the time prescribed by law.

STATEMENT OF THE CASE

Petitioner, a resident of Willoughby Hills, Ohio, participated in a petition drive, the object of which was to recall certain elected city officials. The Clerk of the City Council found the petitions defective under state law. The organizers then sought a writ of mandamus from the Ohio Supreme Court ordering the Clerk to place the recall on the November, 1976 ballot, but that Court, in *State, ex rel. Macko v. Monzula*, 48 Ohio St. 2d 35 (1976), agreed that the petitions were defective and denied relief.

Subsequently, petitioner was indicted in state court on several counts of perjury for allegedly making false statements under oath concerning the procedures he followed in gathering signatures for the petition drive. After his arrest, petitioner was promptly arraigned, but he refused at that time to sign a personal recognizance bond or otherwise to take the steps necessary to secure his release. As a consequence, plaintiff was held in the county jail for six days; he then signed the personal bond and was released. Petitioner was acquitted of the criminal charges at the close of the State's case.

Petitioner then brought this action in the U.S. District Court for the Northern District of Ohio, which had jurisdiction pursuant to 28 U.S.C., Sections 1331 and 1343.

Petitioner's complaint alleges that various actions by the defendants violated plaintiff's rights under the civil rights laws and the First, Fifth, Sixth, Eighth and Fourteenth Amendments. More specifically, the complaint asserts that the defendants unlawfully interfered with the petition drive, denied petitioner due process of law at his arraignment, and subjected him to cruel and unusual punishment during his six-day incarceration. Named as defendants are the City of Willoughby Hills, Lake County, Judge John M. Parks, Prosecutor John E. Shoop, Lake County Board of Elections Chairman E. W. Mastrangelo, and Lake County Sheriff Edwin Cunningham.

The trial court sustained a motion by all defendants to dismiss the complaint pursuant to Civ. R. 12(b)(6), in that petitioner had failed to state a claim upon which relief could be granted.

The Court of Appeals affirmed the dismissal, holding that even when construed in the light most favorable to plaintiff, the complaint failed to state *any* claim upon which relief could be granted.

In reaching the result, the Court of Appeals considered petitioner's allegations against the city and county in light of this Court's holding in *Monell v. New York Board of Social Services*, 436 U.S. 658 (1978), which had been decided after the District Court's action. Even in light of *Monell*, the Court of Appeals found, the complaint failed to state a claim upon which relief could be granted against either governmental entity.

The Court of Appeals opinion also noted, *inter alia*, that petitioner was unable to supplement his complaint

with any cognizable allegation when given the opportunity at oral argument, despite "searching inquiry" from the bench.

The judgment of the Court of Appeals was entered on June 15, 1979. On October 17, 1979, 124 days later, petitioner filed his petition for certiorari with this Court.

ARGUMENT

I. THE SUPREME COURT OF THE UNITED STATES LACKS JURISDICTION TO REVIEW, BY WAY OF CERTIORARI, AN ORDER OF A FEDERAL COURT OF APPEALS IN A CIVIL CASE WHERE THE PETITIONER DOES NOT PRESENT HIS PETITION WITHIN THE TIME SET BY STATUTE.²

Title 28, U.S.C., Section 2101, establishes time limitations for litigants who wish to assert the appellate jurisdiction of this court by way of appeal or certiorari, defining specifically the limits for civil litigants³ but leaving to the discretion of this court the setting of specific limits for criminal case litigants.⁴

2. All respondents join in presentation of this argument.

3. 28 U.S.C., Section 2101(c):

Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

4. 28 U.S.C., Section 2101(d):

The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

Rule 22(1) and (2) of the Rules of this Court implement the statutory grant of discretionary power regarding *criminal* cases. As regards *non-criminal* cases, Rule 22(3) is explicit:

A petition for a writ of certiorari in all other cases shall be deemed in time when it is filed with the clerk within the time prescribed by law.

Recent decisions of this Court have held that, as regards Rule 22 (2), a failure of a criminal case litigant to file a petition within the time stated therein does not deprive this Court of jurisdiction, but that it may, in the exercise of its statutorily granted discretion, waive the Rule and grant certiorari "when the ends of justice so require".⁵ This holding is wholly consistent with the principle that "it is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it".⁶

But although Congress has delegated to this Court the discretion to establish, and hence waive, such time limitations in criminal cases, Congress reserved unto itself the setting of time limits for petitioning for certiorari in civil cases, and has set those limits, at 28 U.S.C., Section 2101(c).⁷

5. *Schacht v. United States*, 398 U.S. 58 at 64 (1970); *Taglianetti v. United States*, 394 U.S. 316, n.1 (1969); *Heflin v. United States*, 358 U.S. 415, n.7 at 418 (1959).

6. *American Farm Lines v. Black Ball*, 397 U.S. 532 at 539 (1970).

7. See note 3, *supra*. Both 28 U.S.C., Section 2101(a) and (b), dealing with direct appeals from the district courts, establish specific time limitations and, although not involved herein, would be governed by the same jurisdictional principles which govern petitions or appeals filed under Section 2101(c).

This Court thus has not been delegated discretion to establish and waive rules regarding the time to petition for certiorari in civil cases which fall within the purview of Section 2101(c), and may not waive the limitation herein.⁸

Such a conclusion is compelled by the prior decisions of this Court, which have held that *statutory* time limits for petitioning for certiorari are jurisdictional in nature, and absent compliance by the petitioner, this Court has no jurisdiction to hear the case.⁹ In *Federal Trade Commission v. Minneapolis-Honeywell Co.*, 344 U.S. 206 (1952) it was held, at 213:

"... we do mean to encourage applicants to this Court to take heed of another principle—the principle that litigation must at some definite point be brought to an end. It is principle reflected in the statutes which limit our appellate jurisdiction to those cases where review is sought within a prescribed period." (footnote omitted)

Therefore, this Court is compelled to deny the petition for certiorari herein for a failure to comply with 28 U.S.C., Section 2101(c),¹⁰ a failure which denies to this Court jurisdiction to hear the case.

8. See *Schacht v. United States*, 398 U.S. 58 at 68 (Harlan, J., concurring) (1970).

9. *Matton Steamboat Co. v. Murphy*, 319 U.S. 412 (1943); *Department of Banking v. Pick*, 317 U.S. 264 at 268 (1942); *Citizens Bank v. Opperman*, 249 U.S. 448 (1919).

10. A failure to comply with 28 U.S.C., Section 2101(c) has barred many a petitioner from this Court, although the denials of certiorari do not note whether the denial is discretionary or jurisdictional. See, e.g., *Donn v. Chatfield*, 434 U.S. 875 (1977); *Fogg v. Welcome*, 432 U.S. 911 (1977); *Bureau of Revenue v. Fox*, 424 U.S. 933 (1976); *Houriha v. Dakin*, 416 U.S. 951 (1974); *Foster v. Montanye*, 415 U.S. 1000 (1974); *Pruett v. First National Bank of Nevada*, 415 U.S. 995 (1974); *Hayden Stone, Inc. v. Piantes*, 415 U.S. 995 (1974); *Hart v. Coiner*, 415 U.S. 938 (1974).

II. NEITHER SPECIAL NOR IMPORTANT REASONS EXIST TO WARRANT A DISCRETIONARY GRANT OF CERTIORARI IN THIS CASE.

The Sixth Circuit Court of Appeals did not, *sub judice*, render a decision in conflict with another court of appeals on the same matter, did not decide a question of federal law not heretofore settled by this Court, has not decided a federal question in a manner conflicting with the applicable decisions of this Court; nor did it depart from accepted and usual judicial proceedings so as to call for an exercise of this Court's power of supervision. In short, there is neither special nor important reasons for which a discretionary grant of certiorari is warranted.

A. The Court of Appeals Correctly Applied Existing Law in Affirming Dismissal of the Complaint Against Respondents Lake County, Judge John M. Parks, Prosecutor John E. Shoop, and Board of Elections Chairman E. W. Mastrangelo.¹¹

Any fair or even broad reading of petitioner's complaint shows that even though Lake County is alleged to have violated petitioner's rights, the acts complained of are solely those of individuals.

At no place in the complaint is there any allegation or hint of allegation whatever that the acts complained of are the result of official county policy, legislation, or custom.

For this reason alone, the complaint fails to state a claim upon which relief could be granted. In *Monell v. New York Board of Social Services*, 56 L. Ed. 2d 611 (1978), this Court held, at 635:

11. Respondents Lake County, Judge John M. Parks, Prosecutor John E. Shoop, and Board of Elections Chairman E. W. Mastrangelo join in presentation of this argument.

Local governing bodies, therefore, can be sued directly under Section 1983 . . . where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by that body's officers. Moreover, . . . local governments, . . . may be sued for constitutional deprivations visited pursuant to governmental "custom"

This Court concluded, at 636:

On the other hand, the language of Section 1983, read against the background of the same legislative history, compels the conclusion that Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort.

Absent such an allegation—that some official policy caused a deprivation of a right guaranteed by the constitution, petitioner's complaint failed to state a claim upon which relief could be granted against Lake County, and, it was properly dismissed.

The Court of Appeals also committed no error in affirming dismissal of the complaint as to the named county officials.

Judge John M. Parks, who was alleged to have denied petitioner his rights by refusing to explain the indictment to petitioner at arraignment, is wholly immune from suit for actions performed in his official capacity. *Pierson v. Ray*, 386 U.S. 547 (1967).

Prosecutor John E. Shoop, alleged to have denied petitioner his rights by collaborating with others to suppress petitioner's recall efforts in 1976, did not take office until January 2, 1977, and thereafter engaged only in supervision

of the then-pending criminal action against petitioner. Reading the complaint as indulgently as possible, it appears petitioner alleges, at most, that Prosecutor Shoop should be liable for actions taken in the prosecution of a criminal case. This Court has affirmatively stated that he may not; that prosecutors are immune from liability for actions taken in performance of official litigation duties. *Imbler v. Patchman*, 424 U.S. 409 (1976).

The Court of Appeals thus did not err in dismissing the complaint against Prosecutor Shoop.

Absolute immunity cannot be claimed for Board of Elections Chairman E. W. Mastrangelo. But, as an administrative officer, Mastrangelo does have a qualified immunity from suit provided he (1) acts in good faith, (2) within the bounds of his authority, and (3) in a manner which does not violate the clearly established constitutional rights of persons with which he deals. *Procunier v. Navarette*, 434 U.S. 555 (1978); *O'Connor v. Donaldson*, 423 U.S. 363 (1975); *Scheuer v. Rhodes*, 416 U.S. 232 (1974).

Plaintiff's complaint is only that defendant Mastrangelo's staff refused to provide him copies of rules regarding the validation of signatures on petitions. Even if such an act could somehow violate some colorably constitutional right, such a right has not been clearly established. Further, no allegation is made that Mastrangelo acted outside his authority or that his actions were in bad faith. Thus, neither the District Court nor the Court of Appeals erred in dismissing, and affirming dismissal, of the complaint against Board of Elections Chairman E. W. Mastrangelo.

It appearing that no error occurred *sub judice* regarding the dismissal of the complaint against Lake County or its officers, the petition for certiorari should be denied.

B. The Court of Appeals Correctly Applied Existing Law in Affirming Dismissal of the Complaint Against the City of Willoughby Hills.¹²

While respondents recognize that the decision of this Court in the case of *Monell v. New York Board of Social Services*, 436 U.S. 658, 56 L. Ed. 2d 611 (1978) was announced subsequent to the dismissal of the Complaint by the District Court, it is clear that the Court of Appeals carefully considered the Complaint and properly affirmed its dismissal.

The Complaint in this matter fails to allege any facts which would tend to establish liability under federal civil rights statutes. This is made apparent by the failure of the Complaint to state facts which would show or tend to show that plaintiff was denied any constitutionally guaranteed right by operation or application of some city ordinance, custom or usage. No such allegation is contained in the Complaint, and, under the rules set forth by this Court in the *Monell* case such an allegation must be made and proven for there to be recovery against a governmental entity.

This Court will also note that the Court of Appeals, on this issue among others, conducted a "searching inquiry from the bench" concerning the allegations of the Complaint. The appellate Court, even after this careful questioning of the petitioner, was unable to conclude that petitioner had stated a claim under the civil rights laws, even reading the Complaint "as indulgently as possible."

It should also be pointed out that petitioner has, since the filing of his Complaint in the District Court in May of 1977, filed no less than five separate actions against defendants herein (respondents) and others in the Court of

¹². Respondent City of Willoughby Hills presents this argument.

Common Pleas for Lake County, Ohio. These cases were presented to the Court of Appeals in a Supplemental Appendix (by copies of Complaints, relevant Judgment Entries and other explanatory documents).

These cases in state court, taken individually and collectively, rely on the same operative facts as those pleaded in the complaint in the case at bar and raise or could have raised the same issues presented therein.

Because petitioner has elected to bring the claims presented by the matters described in the Complaint herein to the attention of the state courts, the Court of Appeals correctly left undisturbed the decision of the District Court which leaves petitioner with his state court actions, the determination of which would be *res judicata* to the claims petitioner asserts in this case.

CONCLUSION

Petitioner has failed to properly invoke the jurisdiction of this Court and to present special and important reasons for granting a writ of certiorari.

To properly invoke the jurisdiction of this Court, petitioner must have filed his petition not later than 90 days from the entry of judgment by the Court of Appeals, as required by 28 U.S.C., Section 2101(c). By failing to file the petition until the 124th day, he deprived this Court of the ability to adjudicate his claim and for that reason alone certiorari must be denied.

But it is also manifest that petitioner has, in fact, failed to state *any* claim against the respondents on which the District Court could have granted relief. Both the District Court and Court of Appeals, correctly reading the Complaint as indulgently as possible and providing him extensive opportunities to supplement the allegations,

were unable to find that a legally-cognizable allegation was raised. Such a finding by both lower courts should carry great weight here, *Offut v. United States*, 348 U.S. 11 at 15 (1954), and compel the use of sound discretion to deny certiorari herein.

Respectfully submitted,

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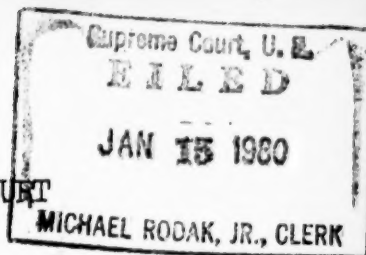
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IN THE UNITED STATES SUPREME COURT
WASHINGTON, D.C.



CASE NO. 79-833

ROBERT J. KONDRAT
Petitioner

vs.

CITY OF WILLOUGHBY HILLS, et al.

PETITIONER'S REPLY BRIEF

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ARGUMENT

Petitioner is in receipt of Respondents' BRIEF IN OPPOSITION TO CERTIORARI. Petitioner's REPLY BRIEF is in response to Respondents' argument and will clarify inaccuracies presented by Respondents.

1. Respondents have questioned whether the Supreme Court has jurisdiction in a civil case where the petitioner does not present his petition within the time set by the statute. As this court is aware of, a NOTICE OF APPEAL was filed August 9, 1979 in the United States Court of Appeals for the Sixth Circuit, well within the statute, all in accordance with Part IV, page six, of the rules of the Supreme Court of the United States.
- However, Petitioner was informed that the procedure, as given on page six, was improper for Petitioner's appeal. Consequently, a delay was experienced by exchange of correspondence until the

correct procedure was arrived at. This court has recognized this fact, and at its discretion, and in the interests of justice, has accepted the docket fee and docketed the case.

2. Respondents state (page 5 of Respondents' brief) that "petitioner was indicted in state court on several counts of perjury for allegedly making false statements under oath concerning the procedures he followed in gathering signatures for the petition drive." This is not a true statement. Its a fact that petitioner was indicted on fabricated criminal activity. See State of Ohio vs. Robert J. Kondrat, Case No. 76- CR 473.

3. Respondents state (pages 5 and 6 of Respondents' brief) that "Petitioner was acquitted of the criminal charges at the close of the State's case. Petitioner then brought this action in the U.S. District Court for the Northern District

of Ohio." This is not a true statement. Petitioner brought this action into the U.S. District Court before, not after the State's case.

4. Respondents state (page 11 of Respondents' brief) that E. W. Mastrangelo, as an administrative officer does have a qualified immunity from suit provided he (1) acts in good faith; (2) within the bounds of his authority and; (3) in a manner which does not violate the clearly established constitutional rights of persons with which he deals. The Respondent, the Chairman of the Board of Elections of Lake County, Ohio, cut short the time allotted to the Petitioner's exercise of the First Amendment -- the right to petition the government for a redress of grievances, when the Respondent denied to furnish to the solicitors of signatures, the rules governing the validation of signatures. This

denial, by the Respondent, to furnish the requested rules, shortened the ten day statutory grace period given to amending petitions that were defective or, insufficient or incorrect in form or substance. This Respondent's alleged action which denied the full time allotted to the petitioning process, infringed upon and abridged Petitioner's rights guaranteed by the First Amendment. Respondent's action was not in good faith and did violate the constitutional rights of persons. This public information was deliberately denied so as to cut short the petitioning process period.

5. Respondents state in part (page 9 of Respondents' brief) that "the acts complained of are solely those of individuals." This is an untrue statement. The Complaint throughout alleges City

and County. Individuals are named for the purpose of identifying each community and/or jurisdictions' allegations. The Complaint's Appendix defines the Defendants. They are "City of Willoughby Hills, in the State of Ohio, and County of Lake, in the State of Ohio." Respondents' brief continues, stating "For this reason alone, the Complaint fails to state a claim upon which relief could be granted." This is not true. The Complaint has not failed to state a claim upon which relief could be granted.

6. Respondents' state (page 12 of Respondents' brief) that "failure of the Complaint to state facts which would show or tend to show that plaintiff was denied any constitutionally guaranteed right by operation or application of some city ordinance, custom or usage."

And, that "No such allegation is contained in the Complaint." This is not a true statement. Item 3d, page 2 of the Complaint cites the City of Willoughby Hills Charter, Article 8, Section 8.32, regarding the petitioning process, and the City's infringement and abridgement of Petitioner's right guaranteed by the First Amendment.

7. Respondents' state (page 11 of Respondents' brief) "that prosecutors are immune from liability for actions taken in performance of official litigation duties": Imbler v. Patchman cited. This is not a true statement. The allegations against Lake County did not occur in the performance of official litigation duties. The allegations occurred during the administrative and/or investigative stages. And, the intent of the Imbler doctrine is to provide immunity to prosecutors

who conscientiously and honestly execute their duties even though they may have exercised poor judgement in their decision making processes. The Imbler doctrine does not excuse those prosecutors who purposely abuse the use of their office, or engage in conspiracy.

8. Respondents state (page 12 of Respondents' brief) "that the Court of Appeals, on this issue among others, conducted a searching inquiry from the bench concerning the allegations." Respondents neglected to say that the searching inquiry conducted by the Sixth Circuit Court of Appeals did not address itself to all the questions presented for review. The court restricted itself primarily to irrelevant matter concerning Petitioner's incarceration. The question presented for review was cruel and unusual punishment. The searching inquiry conducted

by the court, which consumed most of the hearing, did not address itself to this question. Instead, the court conducted a searching inquiry into the mechanics leading to the incarceration and not into the conditions after Petitioner's incarceration. This question presented for review was not how the Petitioner came to be jailed, but instead, dealt with the question of the type of treatment received after being jailed. Is incarceration without plumbing and/or light considered as cruel and unusual punishment? The lower court skirted the issue.

9. Respondents state in part, (pages 12 and 13 of Respondents' brief) that Petitioner has since the filing of his Complaint, filed in other courts no less than five separate actions against defendants herein and that these cases rely on the same facts as those pleaded in this

Complaint. These are untrue statements. Actions filed in the civil courts are for false arrest and malicious prosecution and; for libel and slander. The facts pleaded in the civil actions are not the same as pleaded for in the deprivation of constitutional rights in Petitioner's Complaint.

In summation, Respondents have stated that "Petitioner has failed to properly invoke the jurisdiction of this Court and to present special and important reasons for granting a review for Writ of Certiorari." On the contrary, Petitioner has properly invoked the jurisdiction of this Court. This Court has recognized the delay, the cause, and reason and, in the interest of justice, and at its discretion, has accepted the filing of the Petition for Writ of Certiorari.

Also, Petitioner has presented special and important Constitutional issues for a writ of certiorari. (1) Can absolute immunity be granted to officials for actions conducted during the investigative and/or administrative stages? (2) Can absolute immunity be granted to officials such as mayors and Board of Elections head? If so, where does absolute immunity stop? (3) Is a city or county considered as persons and be subject to liability for actions that infringe upon the Constitutional rights of citizens? (4) Is incarceration without plumbing and/or light considered as cruel and unusual punishment? and (5) Can justice be expected to prevail when justice itself is a defendant?

All of the above Constitutional questions are important to each and every American. Although some of the

issues presented for review have already been clearly settled by this Court, the Respondents have reintroduced them for the sake of their defense. Aside from these, there looms one issue of especially significant importance to all. And that issue is: Can justice be expected to prevail when justice itself is a defendant?

CONCLUSION

This Court is asked to not recognize the Respondents' request for a denial of Petitioner's Writ of Certiorari because of Respondents' inaccuracies, but more importantly, so that the court may address the questions, and especially the question: Can justice be expected to prevail when justice itself is a defendant?

The judicial handling of the Respondents' alleged injustices has cast a shadow over the integrity of the judiciary. This shadow must be removed. In this case, members of the judiciary

sat in judgement of their colleagues. In each instance, the courts rendered decisions favoring judiciary members. This, despite the fact that overwhelming evidence indicated otherwise.

Through technicalities, irrelevant questions and a turned cheek to the facts, the judiciary arrived at its decisions, in a case in which the Petitioner had no legal training; was deprived of adequate legal counsel because of the Respondents' positions and; was denied readily access to the legal profession's law libraries.

This case is one of modern day tyranny in which, the alleged injustices were committed by Respondents of the legal/ judicial/political sphere. Because of the Respondents' positions and/or profession, the Respondents were accorded a standard of justice which was totally different from that accorded the Petitioner -- but who nevertheless is entitled to the same degree of consideration for justice as given the Respondents.

In this important case of Constitutional issues, the judiciary in the lower courts have displayed a discriminatory posture of protection for its own. No one person in this land should be required to cope with these insurmountable odds in quest of justice. The discriminatory position of the legal/judicial/political faction against all others rivals that of the black/white segregation era. The barriers between the colors which had split this nation for so many years, was finally thrust aside by this court in 1954. Today, there is another barrier. One that separates the justice seekers from the justice makers. Unless this barrier is confronted and removed by this court, then this integration, a requirement for honest and compatible justice cannot be achieved. Justice will then become nothing but a byword, void of any useful purpose, except to selected few. These are what dictatorships are made of.

Respectfully submitted,


ROBERT J. KONDRAT, pro se

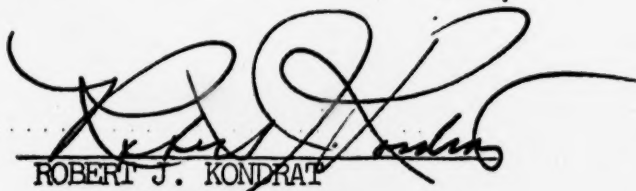
SERVICE

A copy of the foregoing PETITIONER'S REPLY
BRIEF was mailed by regular United States mail,
first class postage prepaid, on this 14th day
of January, 1980, to the following:

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cc: News Media